

## ENVIRONMENTAL AND CULTURAL RESOURCES LAW

### **ORGANIC ACT OF 1916**

Manage national parks in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

### **WILDERNESS ACT OF 1964**

Protect and manage so as to preserve the natural conditions of wilderness lands.

### **NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA)**

NEPA is the basic national charter for protection of the environment. It requires that all Federal agencies develop procedures which will ensure environmental amenities and values be given appropriate consideration in decision-making. (42 USC 4321-4347 Sec. 102(2)).

AML mine closures are Federal actions that require NEPA compliance. In addition, the NEPA process is an ideal place to document decisions on an AML program.

For parks with numerous AML sites, NEPA documentation should be prepared for a park as a whole, not mine site by mine site. NEPA encourages agencies to tier their environmental impact statements to eliminate repetitive discussions of the same issues. "Tiering" refers to the coverage of general matters in broader environmental impact statements with subsequent narrower statements on site-specific issues.

The elements of an environmental assessment include the following:

- a. Identify purpose and need for action.
- b. Analyze environmental, safety, historic, and technical concerns.
- c. Describe affected environment.

From past experience, special attention must be given to site access, new disturbances resulting from site remediation, impacts on threatened and endangered species and other wildlife, loss of historic and other features of interest to visitors and historians, impacts to prehistoric features, loss or improved visitor access and experience, and wilderness issues.

- d. Analyze reasonable alternatives and consequences including direct and indirect effects, long- and



short-term results, any irreversible and irretrievable commitment or resources, and possible conflicts between restoration objectives.

- e. Describe proposed action and rationale for choice.
- f. Provide supporting evidence. (40 CFR Part 1502)

NEPA established the Council on Environmental Quality to advise and assist the President in carrying out the provisions of the act and in reviewing environmental impact statements.

As added in 1970, Section 309 of the Clean Air Act requires that the Environmental Protection Agency (EPA) review and comment on all environmental impact statements. If EPA determines that the proposed action is unsatisfactory from the standpoint of public health or welfare or environmental quality, the decision is published and referred to the Council of Environmental Quality. (42 USC Sec. 7609)

Refer to NEPA Guideline NPS-12 which describes the internal procedures for NPS implementation of NEPA.

#### **ENDANGERED SPECIES ACT OF 1973 (ESA)**

ESA authorizes the US Fish and Wildlife Service (USFWS) to list a species endangered or threatened because of any of the following factors:

1. The present or threatened destruction, modification or curtailment of habitat or range;
2. Over utilization for commercial, recreational, scientific, or educational purposes;
3. Disease or predation;
4. The inadequacy of existing regulatory mechanisms; or
5. Other natural or man-made factors affecting its continued existence. (16 USC Sec. 1533(1)(b)).

Some abandoned mines are habitats for threatened and endangered species including bats, ringtail cats, and spotted owls. If a threatened and endangered species is suspected, ESA clearance is required which means that wildlife studies must evaluate the impact of site remediation. ESA prohibits a Federal agency from taking, approving, or funding an action unless it finds that the action is not likely to jeopardize the

continued existence of a threatened and endangered species or result in the destruction or adverse modification of critical habitat. (16 USC Sec. 1536(b)(3))



USFWS has published rules governing the ESA consultation process at 50 CFR Part 402. Formal consultation is requested by the authorizing agency and triggers the time limits for the consultation process. USFWS must respond in 90 days stating whether the proposed action is likely to jeopardize the species or adversely impact its critical habitat. If USFWS issues the jeopardy opinion, it must also propose reasonable and prudent alternatives that would not violate ESA. (16 USC Sec. 1536(d))

For NPS guidance, see Natural Resources Management, NPS-77 Chapter 2.

#### **NATIONAL HISTORIC PRESERVATION ACT OF 1966 (NHPA)**

NHPA sets forth the concern of the nation for preservation of its heritage. It provides for a National Register of historic places and objects significant in American history, architecture, archeology, and culture.

Under this law, if a property is on or eligible for the National Register, this fact must be considered when any Federally-funded or permitted project might adversely impact the property. For this consideration, note that the property need only be eligible for the National Register, and some AML sites may be eligible.

Section 106 of the act requires that the President's Advisory Council on Historic Preservation be afforded an opportunity to comment on any action which adversely affects properties listed on or eligible for the National Register.

Other applicable legislation and regulations include American Indian Religious Freedom Act, Protection of Historic Properties 36 CFR 800, Standards and Guidelines for Archeology and Historic Preservation FR 48:44716-40, and Federal Agency Responsibilities under Section 110 of NHPA FR 53:4727-46.

Specific NPS management procedures are given in Cultural Resources Management Guideline NPS-28.

#### **OTHER STATUTORY REQUIREMENTS**

To ensure compliance with all relevant and applicable statutory requirements, the AML program coordinator must research park, regional, State, and Federal regulations and guidelines. MMB can assist this research with checklists for adequacy of mine plans and compliance with the NPS guidelines.